

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

REGINALD WILLINGHAM,
Plaintiff,

v.

**WEST GOSHEN POLICE
DEPARTMENT, et al.,
Defendants.**

:
:
:
:
:
:
:
:

CIVIL ACTION NO. 22-CV-3196

ORDER

AND NOW, this 26th day of September 2022, upon consideration of Plaintiff Reginald Willingham's Motion to Proceed *In Forma Pauperis* (ECF No. 10), his Prisoner Trust Fund Account Statement (ECF No. 9), and his *pro se* Amended Complaint (ECF No. 8), it is

ORDERED that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Reginald Willingham, # 0064686, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Chester County Prison or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Willingham's inmate account; or (b) the average monthly balance in Willingham's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Willingham's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding

month's income credited to Willingham's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Warden of Chester County Prison.

4. The Amended Complaint is **DEEMED** filed.

5. The Clerk of Court is **DIRECTED** to amend the caption of this case to reflect the Defendants named in the Amended Complaint.

6. The Amended Complaint is **DISMISSED IN PART WITH PREJUDICE AND IN PART WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C.

§ 1915(e)(2)(B)(ii) for the reasons stated in the Court's Memorandum as follows:

a. All claims against Defendant West Goshen Police Department are **DISMISSED WITH PREJUDICE**.

b. All claims against Defendants Robert A. Gilbert, Stephen Hiro, Joseph R. Virgilio, Braden M. Walsh, and Josha Cumens in their official capacities are **DISMISSED WITHOUT PREJUDICE**.

7. The Clerk of Court is **DIRECTED** to terminate the West Goshen Police Department and West Chester Prison as Defendants.

8. Willingham may file a second amended complaint within thirty (30) days of the date of this Order. Any second amended complaint must identify all defendants in the caption of the second amended complaint in addition to identifying them in the body of the second amended complaint and shall state the basis for Willingham's claims against each defendant. The second amended complaint must be a complete document that does not rely on the initial Complaint, the Amended Complaint, or other papers filed in this case to state a claim. **Any claim**

not included in the second amended complaint will not be part of this case. When drafting his second amended complaint, Willingham should be mindful of the Court's reasons for dismissing certain claims in his Amended Complaint as explained in the Court's Memorandum. Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

9. The Clerk of Court is **DIRECTED** to send Willingham a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Willingham may use this form to file his second amended complaint if he chooses to do so.¹

10. If Willingham does not wish to file a second amended complaint, the Court will direct service of the Amended Complaint on Defendants Robert A. Gilbert, Stephen Hiro, Joseph R. Virgilio, Braden M. Walsh, and Josha Cumens **only**, for a responsive pleading on the individual capacity claims asserted against them. If Willingham intends to proceed on the individual capacity claims only, he may file a notice with the Court stating that intent, at which time the Court will direct service of the Amended Complaint against Defendants Robert A. Gilbert, Stephen Hiro, Joseph R. Virgilio, Braden M. Walsh, and Josha Cumens **only**, for a responsive pleading on the individual capacity claims asserted against them.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.